

Photography Tax Guide

This draft guide will be available for public comment until March 31, 2014. This guide is in a draft form and should not be relied upon at this time. If you need guidance on the taxability of your photography business, please submit your question in writing to Rulings@dor.wa.gov.

Send your comments on this guide to Suggestions@dor.wa.gov, with the words “Draft photography guide” in the subject line.

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Overview of Taxes and Terms

Business and Occupation Tax: Washington's business and occupation (B&O) tax is levied on the business's gross receipts or gross income, without any deduction for costs of labor, materials, business taxes, or other costs of doing business, unless a valid exemption or deduction applies. This is different from an income tax which is applied to the net income of the business after deducting business costs.

The nature of the business activity determines the appropriate B&O tax classification. B&O tax classifications commonly found in the photography industry include Royalties, Service and Other Activities, Wholesaling, and Retailing. Each B&O classification has its own tax rate. B&O tax is computed by applying the applicable B&O tax rate against the gross proceeds of sale or gross income of the business.

Retail Sales Tax: Businesses engaged in retail activities must collect and remit retail sales tax on their total charges unless a specific exemption applies. The sales tax rate is generally determined by the location where the photos are delivered to, and sales tax rates vary around the state. To determine the correct rate and location code for any given address, use the Department's [tax rate lookup tool](#).

If you are an out of state business with activities, customers, or employees in Washington, please refer to our [Tax Guide for out of State Businesses](#). You are required to collect and remit sales tax when selling to Washington customers if you have established nexus in this state.

Use Tax: Photographers owe deferred sales or use tax on items used as a consumer if Washington sales tax has not been collected by the seller, unless an exemption applies. Deferred sales or use tax also applies to retail services if sales tax was not paid at the time of purchase. This includes the purchase of remote access software (RAS) or digital automated services (DAS) that the photographer uses in the course of business. See "When the Photographer is the Consumer" below.

Wholesale Sales: Businesses making wholesale sales do not collect retail sales tax on their charges when they receive a valid reseller permit (or other resale document [approved by the Department](#)). Wholesale sales are those made to businesses buying a product or service for resale without any intervening use. The seller's wholesale income is subject to Wholesaling B&O tax. If a seller does not obtain a reseller permit (or approved resale document) from the buyer the sale is deemed to be a retail sale and the seller is required to collect retail sales tax.

Reseller Permit: You must submit an application to the Department to receive a reseller permit for your business. Photographers who have been issued a reseller permit may use it to purchase goods that will be resold to their customers in the normal course of business. Typical items purchased for resale include photograph quality paper, picture frames, etc.

Royalties: The photographer's gross income from licensing the right to use their intangible property to others is subject to B&O tax under the Royalties classification. See the "Licensing of Photographs" section of this guide for more information.

Apportionable B&O Tax Classifications

Certain B&O tax classifications common to photographers are apportionable classifications; notably the Service and Other Activities and Royalties classifications. If you are “taxable” in another state or country, you may be able to apportion some of your income to that state or country, reducing the amount of income that is subject to Washington’s B&O tax. “Taxable” means that a business meets at least one of the following criteria:

- Pay business activities tax in the other state or country
- Have more than \$53,000 of payroll in the other state or country
- Have more than \$53,000 of property in the other state or country
- Have more than \$267,000 of gross income in the other state or country
- Have at least 25 percent of your total property, payroll, or income in the other state or country

Note that the above dollar amounts are subject to adjustment based on the consumer price index (CPI-U). See WAC [458-20-19405](#).

For more information on the apportionment process, see WAC [458-20-19401](#) (Minimum nexus thresholds for apportionable activities), WAC [458-20-19402](#) (Single factor receipts apportionment – Generally), and WAC [458-20-19403](#) (Apportionable royalty receipts attribution).

If you are an out of state business with activities, customers or employees in Washington, please refer to our [Tax Guide for out of State Businesses](#).

Collecting Sales Tax – Local Tax Rates

Determining the Correct Local Sales Tax Rate for Sales of Photographs

Sales of photos are sourced to the location where the customer receives the photo (i.e., the electronic file) if that location is known. Thus a photo received by a customer in Seattle would be sourced to Seattle (location code 1726), and taxed at Seattle’s sales tax rate.

However, the seller may not always have the information of the location where photos are received. For example, the customer could download the images from their home computer, from a mobile device, or elsewhere without providing a delivery address to the seller. In this case the seller must use an alternate sourcing method as provided by RCW [82.32.730](#). When the actual place of receipt is not known, then an address available from the seller’s business records is sufficient for sourcing the sale. If that information is not available, then the customer’s billing address may be used.

Sales of Photos to Out of State Customers

You are not required to collect Washington sales tax when the photos are received by the customer at a location outside of Washington. This is true regardless of where the photos were actually taken. The Interstate and Foreign Sales deduction is used when filing your excise tax return to account for these sales. **Note:** Selling a photo to an out of state customer is different than licensing the right to use a photo to an out of state customer for B&O tax purposes. See the “Licensing of Photographs” section in this guide for more information. See also “Apportionable B&O Tax Classifications,” above.

When the Photographer is the Consumer

Photographers are the consumers of equipment and supplies used in conducting their business, and must pay sales tax when purchasing these items. The photographer must pay deferred sales or use tax on the item if sales tax was not paid at the time of purchase. An example of when this can happen is when the photographer purchases items from an out of state vendor that does not collect sales tax from Washington customers.

Examples of equipment and supplies upon which the photographer must pay sales tax include:

- Cameras
- Lenses
- Computers
- Printers
- Computer software (including remote access software, or RAS)
- Props used for staging
- Office supplies

Examples of retail services that are subject to sales tax when purchased by the photographer include:

- Remote access software (RAS) – Means possession of the software is maintained by the seller, who charges the customer for the right to access it (e.g., charges for word processing or spreadsheet software that you access remotely)
- Digital automated services (DAS) – Means any service transferred electronically that uses one or more software applications (e.g., online searchable databases)

Digital Photographs

Washington State law generally treats digital photographs and tangible photographs (i.e., prints or photo files delivered on CD) in the same manner for tax purposes.

Digital photographs are considered digital goods when transferred electronically. "Digital goods" means sounds, images, data, facts, or information, or any combination thereof, transferred electronically. Sales of digital photographs are subject to Retailing B&O tax and retail sales tax.

"Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. [RCW 82.04.192](#). Therefore photo files delivered on CDs, USB drives or other tangible media are not digital goods.

Royalties and Digital Photographs

The granting of specific intangible rights to use a photo is not a sale of digital goods subject to retail sales tax, even when the photo is transferred to the buyer electronically. When intangible rights to use a photo are sold to a customer, the seller must somehow deliver the photo in question. The method of delivery – whether tangible (i.e., print or CD) or electronic – does not determine the taxability of the transaction.

See "Licensing of Photographs" in this guide for more information.

Digital Goods Used Solely for Business Purposes

RCW [82.08.02087](#) provides a sales tax exemption for digital goods used solely for business purposes. A photographer is not required to collect sales tax from their customer when each of the following is true:

- a) The customer is a business, **and**
- b) The customer will use the photo solely for business purposes, **and**
- c) The photo is delivered electronically, **and**
- d) The customer provides the seller with a completed [Digital Products and Remote Access Software Exemption Certificate](#)

"Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. Note that government agencies, whether state, local or federal, are not considered "businesses" for purposes of this exemption.

Sitting Fees (includes “session fees,” “shooting fees,” etc.)

Photographers sometimes charge a separate sitting fee to their customers. This fee may also be referred to as a session fee, shooting fee, booking fee, etc. For purposes of this guide we will always use the term “sitting fee” when referring to these charges.

Sitting fees and royalties: Income derived from licensing agreements (where the photographer grants the customer certain well-defined rights to use the photograph for further commercial display) is generally subject to Royalties B&O tax. This includes any separate charges for sitting fees. Compensation for the use of intangible property is further explained under “Licensing of Photographs” in this guide.

Sitting fees and sales of photographs: The taxability of sitting fees that are charged with respect to sales of photographs can vary as discussed under A, B and C below:

A. Sitting Fees as Part of a Package

A photographer may sell both sitting fees and photographs to a customer at the same time, in a package. A sitting fee is always a retail sale subject to sales tax when:

- The sitting fee is directly related to sales of photographs,
- Is performed by the same person, and
- Is performed under a single contract or invoice or at the same time the photographs are purchased

Therefore photographers who sell sitting services and photos in the same transaction or at the same time must collect sales tax on the entire charge.

B. Sitting Fees as a Stand-Alone Service

Sitting fees are not subject to sales tax when sold as a stand-alone service.

Photographers do not need to collect sales tax on sitting fees when sold as a stand-alone sale of services. When taking photographs for a fee without developing, printing or otherwise providing a usable picture, the charges are not subject to the retailing B&O tax or retail sales tax. Instead, the sitting fees income will be subject to B&O tax under the Service and Other Activities classification. See Example 5 below.

C. Sitting Fees When Photographs are Made Available Afterward

In some cases the photographer makes a sale of sitting services to the customer and also offers to sell photographs to the customer, though not as part of the same contract and not at the same time. If, at the time of an agreement, it is contemplated that the photographer would both provide a sitting service and produce photographs for the customer, the sitting fee is subject to retail sales tax.

The Department presumes it is contemplated that the photographer is providing both when it is their normal business practice to provide both, thus Photographers must collect sales tax on sitting fees when selling photographs is their normal business practice. For example, a portrait photographer that specializes in school photography (senior photos, albums, etc.) is normally in the business of selling photographs. The photographer would report this income under the Retailing B&O tax classification.

Normal Business Practice

“Normal business practice” of selling photographs means that the photographer’s standard practice is to offer photographs for sale in addition to services billed to the customer as sitting fees. The photographer’s standard business practice – as evidenced by promotional materials, pricing information, and similar facts – will determine whether or not they are normally in the business of selling photographs in addition to sitting fee services. School photographers, wedding photographers and similar photographers are generally in the business of selling photographs.

A photographer’s normal business practice is not considered to be the sale of photographs if the photographer does not advertise sales of photographs, promote sales of photographs, or sell photographs in the ordinary course of business as described above. Photographers that sell specific rights to use their photographs are generally not in the business of selling photographs. See “Licensing of Photographs” in this guide for more information.

Example 1: A photographer specializes in licensing their photos to business clients for use in their marketing campaigns, and is not in the business of selling photographs. However the photographer is approached by a longtime customer who requests that the photographer handle their daughter’s wedding. Customer agrees to purchase a photo package including the sitting fees and multiple photographs and albums. Sitting fees in this case will be subject to sales tax because sitting fees and photographs are sold together in a package. It does not matter if the photographer’s normal business practice does or does not include selling photographs because photos and sitting fees are sold together as a package.

Example 2: ABC Photography offers CDs and portrait packages on their website. ABC’s normal business practice therefore includes sales of photographs. ABC charges a base \$50 sitting fee for a typical photo session, with additional sitting fee charges if the customer wants more poses, customized backdrops, and so forth.

A customer pays for a sitting fee and comes to the ABC studio for a photo session. Customer may purchase photographs after they have had a chance to view the proofs; however the customer is only obligated to pay for the sitting fee at this time. ABC Photography must collect sales tax on the sitting fee because the normal business practice of ABC Photography includes offering photographs for sale.

Example 3: Great Memories Photography lists a separate price on their website for a sitting fee. The fee covers a photo shoot that can be conducted at the studio or at the customer's home. Sitting fees are due at the time of the session; proofs are later made available for viewing online. A list of prices (e.g., an 8X10 is \$30, 20 wallet size photos are \$18, and so forth) is also posted on the website if the customer wishes to order photos, and all orders are placed directly with Great Memories. However the customer is under no obligation to purchase any photos.

Great Memories' normal business practice – as evidenced by their promotional information – is to sell photographs to customers. The sitting fee charged by Great Memories is a retail sale subject to sales tax and Retailing B&O tax.

Example 4: Still Life Photography offers photography services via their website and brochures. Still Life will take pictures according to your specifications, including portrait work, outdoor photography, etc. Still Life then refers their clients to a third party printer for actual photographs. The customer makes a separate payment to the third party printer based on the number and size of photographs they choose to order.

Still Life's website indicates that they do not sell photographs, but only take the photos for the customer. Still Life should not collect sales tax on their sitting fees. Rather, this income is subject to B&O tax under the Service and Other Activities classification. Still Life is not selling photographs, nor does their normal business practice include sales of photographs.

Example 5: The same facts as Example 4 above, except Still Life also provides customers with a CD imprinted with non-useable and unsalable images from the photo session. These unsalable images are proofs that cannot be effectively used to create photos that a consumer would normally find acceptable. (Images can be made unsalable by making them too small to print or enlarge without significant loss of detail, or may be images with other limitations to normal printing and use, such as visible watermarking. The purpose of such images is solely to give the customer an idea or overview of the results of the photo session.) Under these circumstances, the photographer's charges to the customer are not subject to sales tax. This income should be reported under the Service and Other Activities B&O tax classification. Even though the transaction involves images imprinted on tangible personal property (the CD), the true object of the customer's transaction with Still Life is not the purchase of unsalable images on a CD. The CD is merely media imprinted with a representation of the professional service Still Life has provided. Still Life is the consumer of the CDs and may not use a reseller permit when purchasing them. See "When the Photographer is the Consumer" above.

Portrait Photography

Photographers who take portraits and sell the photos to their customers are generally required to collect sales tax from the customer on all charges, including sitting fees, travel reimbursements, touch up fees, and any other cost passed on to the customer. This is true whether the portraits are delivered as finished prints, are made available for download from a server, or are delivered to the customer on a CD or other tangible medium.

Business and Occupation Tax: Portrait photographers report their gross income under the Retailing B&O tax classification when selling photographs to the end user.

Retail Sales Tax: The photographer must collect and remit sales tax on all charges to the customer.

Sitting Fees

Sitting fees charged by a portrait photographer are generally subject to sales tax and the Retailing B&O tax. See the “Sitting Fees” discussion in this guide for more information.

Sourcing Your Portrait Income

Sales of prints are sourced to the location where the customer receives the prints. See “Collecting Sales Tax – Local Tax Rates” in this guide for more information.

Third Party Fulfillment Services

A photographer may contract with a third party to provide prints or image files to the customer. Two common arrangements are as follows:

- **Third Party Host:** The photographer delivers the finished digital image files to the third party. The third party hosts digital image files on their server for a specified period of time. The customer may download the images at any time during that period.
- **Third Party Printer:** The photographer delivers the image files (or negatives) to the third party printer. The printer in turn produces the specified number of prints and delivers these to the customer, or makes the prints available for pick up.

In both cases the taxability of the photographer’s income can vary according to the terms of the agreement between the photographer and the third party.

Example 6: After taking photographs, Acme Photography forwards them to a third party who then makes the photos available for download for the customer. Under the terms of the agreement, the third party is paid by Acme for this service. The third party does not charge the customer anything when the customer downloads the images. The customer is a consumer purchasing family photos. The photographer is making a retail sale of digital photos and must collect and remit sales tax on all charges to the customer. The photographer’s gross income is also subject to the Retailing B&O tax.

Example 7: Using the same facts as Example 6 above, except Acme’s customer is a business that will use the photos in an advertising campaign under a licensing agreement with Acme. Acme retains ownership of their intangible property, the photos. Acme’s gross income is subject to the Royalties B&O tax. Acme should not collect sales tax from their customer. See “Licensing of Photographs” in this guide for more detail on licensing transactions.

For scenarios involving third parties that are not addressed in this guide, the Department recommends that you request a binding tax ruling. See “Need Assistance?” in this guide below for instructions on requesting such a ruling.

Sourcing sales tax when photographs are fulfilled by third party

Sales are sourced to the location where the customer receives the photo if that location is known. Thus a photo received by a customer in Seattle would be sourced to Seattle (location code 1726), and taxed at the corresponding Seattle sales tax rate. See “Collecting Sales Tax – Local Tax Rates” in this guide for more information.

Event Photography

Event photographers are contracted to take photographs by the event, such as weddings, birthday parties, etc. A typical contract might include:

- Shooting fees
- Travel expenses
- Charges for the photos themselves
- Related, miscellaneous expenses

Business and Occupation Tax: Event photographers report their gross income under the Retailing B&O classification when selling photographs to the end user.

Retail Sales Tax: The event photographer must collect and remit sales tax on all charges to the customer, including reimbursed travel expenses and other miscellaneous expenses.

Sitting Fees

Sitting fees charged by an event photographer are generally subject to sales tax and the Retailing B&O tax. See the “Sitting Fees” discussion in this guide for more information.

Sourcing your event income

For sales tax purposes, the income is sourced according to where the customer takes possession of the final product. The location of the event itself does not determine the sales tax rate. See “Collecting Sales Tax – Local Tax Rates” in this guide for more information.

Example 8: An Idaho couple decides to conduct their wedding ceremony in the city of Spokane. They contract with a Spokane-based photographer to cover their wedding. The contract includes a variety of prints and a CD with the photographs, all to be mailed to the couple's Idaho residence. The photographer should not collect sales tax from the customers on any portion of the contract because the photos are delivered outside Washington. The interstate and foreign sales deduction will be used by the photographer when filing their excise tax return.

Example 9: A Tacoma couple hires a local photographer to take pictures at their daughter's 16th birthday party. The birthday party is held at a restaurant in Seattle. After the party, the photographer sends a CD with the finished images to the couple by mail, at their Tacoma address. The Tacoma sales tax rate applies.

Licensing of Photographs

The licensing of a photograph occurs when a photographer sells the intangible right to use their photograph to a customer for further commercial display, while retaining ownership of the photo. This is sometimes referred to as commercial photography. Thus the photographer's income arises not from the sale of photographs, but from licensing the use of their intangible property. Typical rights granted to customers include the right to publicly display, exhibit, publish, copy and sell the image.

Rights are defined and limited by contract, invoice or other relevant documentation. For example the customer may receive specific intangible rights to display the image for a 2 year period on billboards in the greater Spokane area, and within a catalog distributed nationally.

Business and Occupation Tax: The photographer's gross income from licensing the right to use their intangible property to others is subject to B&O tax under the Royalties classification.

Retail Sales Tax: Charges to the customer for the grant of intangible rights are not subject to sales tax.

Sitting Fees

Sitting fees associated with the granting of an intangible right to use the photo are subject to the Royalties B&O tax. See the "Sitting Fees" discussion in this guide for more information.

Documentation

It is important that a photographer retain documentation establishing the nature of the transaction. The invoice, contract or other instrument of sale must clearly state the specific intangible rights that are being granted to the user of the photo. The fact that the invoice may have a separate line item for "licensing" or "rights of usage" fees is not, in and of itself, determinative.

Please note: The outright sale of all rights to a photograph (e.g. right to copy, publish etc) is not subject to B&O tax under the Royalties classification. Instead, this income is subject to B&O tax under Service and Other Activities.

Example 10: Photographer is hired by a business (the Customer) to take photos of Mount St. Helens. Customer requests that it have the right to use the images in their promotional materials and on their website. Photographer invoices the Customer for a total of \$6,400. Line items on the invoice include costs incurred by the Photographer such as travel expenses, equipment rentals and creative fees. However, the invoice states that Photographer retains ownership of the photos and grants the Customer the intangible right to use the images for four years in its promotional material distributed and displayed inside the United States, along with limited web site usage. The Photographer is engaging in a licensing activity and their gross income (in this case \$6,400) is subject to B&O tax under the Royalties classification.

Example 11: The same facts as Example 10 above, except the photographer adds a line item to the invoice for 100 posters of Mount St. Helens at \$10 per copy for an additional charge of \$1,000. The invoice total is now \$7,400. Photographer still pays Royalties B&O tax on the licensing activity of \$6,400. The photographer pays Retailing B&O tax on the \$1,000 charge for posters, and must collect and remit sales tax on the \$1,000 sale of posters. The photographer has engaged in two separate business activities taxable under different B&O categories.

Apportioning Your Royalties Income

Income reported under the Royalties B&O tax classification is apportionable. See “Apportionable B&O Tax Classifications” in this guide for more information.

Photography for Hire

When a photograph is made for hire, the photographer contractually agrees that all rights to the photograph they have taken will belong to the customer. Photography for hire is distinguished from other types of photography in that the photographer for hire is selling his or her services to create the photograph, but never owns the intangible rights to the photograph they have created.

Business and Occupation Tax: Income earned from producing photographs for hire is subject to B&O tax under the Service and Other Activities classification.

Retail Sales Tax: Charges to the customer are not subject to sales tax.

Apportioning Your Service and Other Activities Income

Income reported under the Service and Other Activities B&O tax classification is apportionable. See “Apportionable B&O Tax Classifications” in this guide for more information.

School and Student Photography

Business and Occupation Tax: Photographers selling prints, albums and related materials to students or parents are subject to B&O tax under the Retailing classification on their gross proceeds of sale.

Retail Sales Tax:

- **Sales made directly to students or parents**
A photographer must collect sales tax from their customer on the gross (total) charges, including sitting fees.
- **Sales to students using the school as an agent**
A photographer who uses schools to collect the sales price of school pictures must collect and remit sales tax on the full selling price. There is no deduction for any amounts paid to the schools or others as fees or commissions. See also [ETA 3017.2009](#).

Sitting fees

Sitting fees charged by a school photographer are generally subject to sales tax and the Retailing B&O tax. See the “Sitting Fees” discussion in this guide for more information.

Duplicating Prints

If your business duplicates prints for customers, please refer to WAC [458-20-141](#) for more information.

Need Assistance?

The Department of Revenue offers a variety of services to help you understand your Washington State tax obligations and file your returns correctly:

Telephone Information Center: To get answers to your general tax questions and for assistance in filing your returns, please call our Telephone Information Center at 1-800-647-7706.

Tax Rulings: If you have a tax-related question specific to your business, you may request a binding tax ruling from the Department at rulings@dor.wa.gov. The request must identify the business in question and include all pertinent facts. Tax rulings are binding on both the taxpayer and the Department of Revenue.

Tax Rate Lookup Tools: The Department has a GIS tool for finding the correct sales tax rate for any location. We also have apps for your mobile device. Go to dor.wa.gov and select “Find a sales tax rate.”

Local Field Offices: The Department has several field offices located across Washington. To locate the office nearest you, go to dor.wa.gov and select “Contact Us.”